

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

WILBUR MORRIS VANNATTER,

Plaintiff,

v.

Civil Action No.: 3:21-cv-00125

**CSX TRANSPORTATION INC.,
ROY C. KAISER, AND,
JOHN DOE, LOCOMOTIVE
OPERATOR, AND,
JOHN DOES (1-10),**

Defendants.

DEFENDANT CSX TRANSPORTATION, INC'S NOTICE OF REMOVAL

Defendant CSX Transportation Inc., (hereinafter "CSXT") by and through its undersigned counsel, pursuant to 28 U.S.C §§ 1332, 1441, and 1446, hereby removes to the United States District Court for the Southern District of West Virginia, Huntington Division, the civil action pending in the Circuit Court of Cabell County, West Virginia, captioned *Wilbur Morris Vannatter v. CSX Transportation Inc. et al*, No. 21-C-34 (filed 01/22/2021). This Court has jurisdiction of the dispute based on diversity of citizenship. In support of this removal, Defendant respectfully states the following:

1. Plaintiff commenced this action in the Circuit Court of Cabell County, West Virginia, Civil Action No. 21-C-34 (hereinafter "State Court Action") on or about January 22, 2021.

2. A copy of the Summons and Complaint was found by CSXT in its office located at 935 7th Ave. Huntington, WV. It is not known how these documents were sent to this address.

Defendant maintains that service of process was improper and, by filing this Notice of Removal Defendant is not waiving its objection to service of process. However, pursuant to 28 U.S.C § 1146(b), this *Notice of Removal* is timely filed because it has been filed within thirty (30) days of receipt of the *Summons and Complaint* by Defendant.

3. The United States District Court for the Southern District of West Virginia, Huntington Division, is the “district and division” for actions removed from the Circuit Court of Cabell County, West Virginia pursuant to 28 U.S.C. §§ 129(a) and 1446(a).

4. Pursuant to 28 U.S.C. § 1446(a), copies of all “process, pleadings, and orders” received by Defendant from the State Court Action are attached hereto as **Exhibit A**. The Docket Sheet from the State Court Action is attached hereto as **Exhibit B**.

5. This civil action arises from an incident that occurred on or about February 5, 2019 in Logan County, West Virginia. *See Exhibit A, Complaint, ¶ 15.*

6. Plaintiff claims he tripped and struck his head on or near CSXT train tracks and was rendered unconscious or his conscious was altered. **Exhibit A, Complaint, ¶ 22.**

7. Plaintiff claims that while he was unconscious or under altered consciousness a CSXT train struck him. *See Exhibit A, Complaint, ¶¶ 23-25.*

8. Plaintiff alleges that he sustained injuries to his body which has resulted in and will continue to result in, medical expenses, pain and suffering, physical limitations, and loss of earning capacity. *See Exhibit A, Complaint, ¶ 17.*

9. There is a complete diversity of citizenship between the Plaintiff and the Defendant in this action.

10. Diversity of citizenship under 28 U.S.C. § 1332 exists where no plaintiff is a citizen of the same state as any defendant and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs.

11. An action is removable to federal court where diversity of citizenship under 28 U.S.C. § 1332 exists and no defendant that has been properly joined and served is a citizen of the state in which the action is brought. 28 U.S.C. § 1441(a), (b). Citizenship of a corporation is based on both the state of incorporation and the corporation's principal place of business. 28 U.S.C. § 1332(c).

12. At the time of filing of Plaintiff's *Complaint* in the State Court Action, and at all relevant times, Plaintiff was a citizen of Logan County, West Virginia. *See Exhibit A, Complaint*, ¶ 1.

13. At the time of filing of the Plaintiff's *Complaint* in the State Court Action, and at all relevant times, Defendant CSXT was a Virginia corporation, with its principal place of business in Jacksonville, Florida.

14. As of the filing of this *Notice of Removal*, upon information and belief, the citizenship of the respective parties remains unchanged.

15. Plaintiff does not seek a specific amount in the *Complaint*. However, Plaintiff states that his damages "far exceed \$75,000." *Exhibit A, Complaint* ¶ 78. As a result, the amount in controversy requirement is met.

16. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 as Plaintiff and Defendants are completely diverse in their citizenship and the amount in controversy will exceed \$75,000 exclusive of interests and costs.

17. No other Defendants have been served in this matter. Where less than all defendants have been served at the time of removal, it is proper that only the defendants served at the time of removal need to join or consent to the notice of removal. *Wolfe v. Green*, 660 F. Supp.2d 738, 744 (S.D. W. Va. 2009). Further, unknown John Does are nominal parties who are not required to join in a notice of removal. *See Allen v. Monsanto Co.*, 396 F. Supp.2d 728, 732-33 (S.D. W. Va. 2005).

18. All properly joined and served Defendants consent to removal pursuant to 28 U.S.C. § 1446(b).

WHEREFORE, Defendant CSXT submits this *Notice of Removal* for the consideration of the Court herein and hereby gives notice to the Clerk of the Circuit Court of Cabell County, West Virginia that Removal is hereby effected and that no further action by the Circuit Court shall take place unless this action be REMANDED by the United States District Court.

CSX TRANSPORTATION, INC.
By Counsel,

/s/ Robert L. Massie

Robert L. Massie (WVSB #5743)

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CERTIFICATE OF SERVICE

This undersigned attorney hereby certifies that a copy of the foregoing “*Defendant CSX Transportation, Inc.’s Notice of Removal*” has been served upon the following individuals via U.S. Mail, postage prepaid at Huntington, West Virginia, this 22nd day of February, 2021:

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/s/ Robert L. Massie